

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAHFUJUR RAHMAN and LITON SHAH,

Plaintiffs,

17 Civ. 05156 (RA)(BCM)

v.

RED CHILI INDIAN CAFÉ, INC., MOHAMMED
MOJNU MIAH a/k/a SHEIKH MOHAMMED
MONJU, and NOOR ISLAM a/k/a MOHAMMED
HARUN MIAH,

Defendants.

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**CLERK'S CERTIFICATE
OF DEFAULT**

I, RUBY J. KRAJICK, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action was commenced on July 7, 2017 with the filing of a Summons and Complaint (Dkt. 1), a copy of the Summons and Complaint was served on Defendant Mohammed Mojnu Miah by personally serving him on July 24, 2017, and proof of service was filed on August 8, 2017 (Dkt. 15), a copy of the Summons and Complaint was served on Defendant Red Chili Indian Café, Inc. on August 2, 2017 by delivering it to and leaving it with Sue Zouky, authorized agent in the Office of the Secretary of State of New York who accepted service, and proof of service was filed on August 8, 2017 (Dkt. 16), a copy of the Summons and Complaint was attempted to be served on Defendant Mohammed Harun Miah and an affidavit of due diligence was filed on August 8, 2017 (Dkt. 17). I further certify that an Amended Complaint was filed on August 14, 2017 identifying Noor Islam as the proper name for Defendant Mohammed Harun Miah (Dkt. 19), and that on September 22, 2017, Defendants Mohammed Mojnu Miah and Noor Islam appeared and filed a Joint Answer (Dkts. 24-26). I further certify that on October 5, 2018, the parties appeared for an Initial Conference before Magistrate Henry Pitman, the individual Defendants appeared and proceeded *pro se*, and Magistrate Pitman issued a Scheduling Order (Dkt. 42). I further certify that on February 22,

2019, the *pro se* Defendants failed to appear at a status conference before Magistrate Pitman and that on April 12, 2019, Plaintiffs filed a letter motion for leave to file a motion to strike Defendants' answer and affirmative defenses for failure to comply with the Court's Orders (Dkt. 49). I further certify that on April 16, 2019, District Judge Ronnie Abrams granted Plaintiffs' motion for leave to file (Dkt. 50), and on May 1, 2019, Plaintiffs filed their motion to strike Defendants' Answer and Affirmative Defenses (Dkts. 51-53). I further certify that on May 17, 2019, Magistrate Barbara Moses issued an Order directing Defendants Miah and Islam to respond and appear on June 10, 2019 (Dkt. 59). I further certify that on June 10, 2019, a status conference was held before Magistrate Moses, and as Defendants failed to appear, on July 12, 2019, Magistrate Moses issued a Report and Recommendation to District Judge Abrams granting Plaintiffs' motion to strike (Dkt. 61). I further certify that on December 5, 2019, District Judge Abrams adopted Magistrate Moses's Report and Recommendation granting Plaintiffs' leave to move for default against Defendants (Dkt. 66).

I further certify that on January 3, 2020, Plaintiffs filed their Notice of Motion for Default Judgment against Defendants (Dkt. 71). I further certify that on January 6, 2020, District Judge Abrams issued an Order to Show Cause for Default Judgment directing Defendants to show cause at a conference on February 10, 2020 why a default judgment should not be entered in favor of the Plaintiffs for the relief requested in their Complaint (Dkt. 80). I further certify that on February 10, 2020, Plaintiffs and the individual Defendants appeared at the conference before District Judge Abrams but the corporate Defendant, Red Chili Indian Café, Inc., failed to appear as no counsel was present to represent the corporation. I further certify that on February 21, 2020, the matter was referred to Magistrate Moses for pretrial discovery relating to the claims against the individual Defendants and any dispositive motions (Dkt. 87). I further certify that on

February 26, 2020, District Judge Abrams issued an Order denying Plaintiffs' motion for default judgment and stating that "Defendant Red Chili Indian Café, Inc. will be given one more opportunity to find counsel to represent it in this action... (and) (i)f it does not obtain representation and file a responsive pleading by April 27, 2020, Plaintiffs' motion for default judgment against it will be granted." (Dkt. 88).

I further certify that on February 27, 2020, Magistrate Moses issued an Order scheduling a status conference of the parties and directed Defendants to appear before the Court on April 28, 2020 (Dkt. 90). I further certify that the February 27, 2020 Order also directed the individual Defendants to bring certain following documents and information at the April 28, 2020 conference, including "(a)ll tax returns and tax filings of the corporate defendant Red Chili for the years 2015 and 2016,... (a)ll documents concerning revenues, income, payroll, expenses, taxes or any other money earned or spent by Red Chili during the years 2015 and 2016, including Red Chili's bank statements and the two notebooks that defendant Miah described at his deposition,... the name(s) and contact information of all third party tax preparer(s) and accountant(s) used by Red Chili from 2015 to the present; and... the telephone numbers, account names, and cellular service providers associated with all cellphones used by the individual defendants and/or by Red Chili during the years 2015 and 2016." *Id.* I further certify that on April 28, 2020, the Plaintiffs and the individual Defendants appeared before Magistrate Moses via telephone. I further certify that on April 29, 2020, Magistrate Moses issued an Order directing that no later than May 12, 2020, individual Defendants execute and provide Plaintiffs' counsel completed IRS Forms 4506-T on behalf of themselves individually and on behalf of the corporate Defendant; no later than May 26, 2020, individual Defendants produce to Plaintiffs' counsel all of the documents they were required to by the Court's February 27, 2020 Order; and that a further

telephonic conference would be held on June 10, 2020, and no later than June 3, 2020, after consultation with the individual Defendants, Plaintiffs are to submit a letter updating the Court on Defendants' compliance with the Order (Dkt. 97).

I further certify that on April 30, 2020, District Judge Abrams issued an Order granting Plaintiffs' motion for a default judgment against Defendant Red Chili Indian Café, Inc. as a result of their repeated failures to appear before the Court (Dkt. 98). I further certify that on June 3, 2020, Plaintiffs' counsel submitted a status letter to the Court which stated that Plaintiffs received an executed IRS Form 4506-T from Defendant Mohammed Miah on behalf of himself, individually, and also on behalf of the corporate Defendant, Red Chili Indian Café, Inc., but that Plaintiffs did not receive an executed IRS Form 4506-T from Defendant Noor Islam, and that Plaintiffs did not receive from Defendants the required documents and information set forth in the April 29, 2020 Order but were aware of certain documents and information that Defendant Miah mailed to the Courthouse, which would also be mailed to Plaintiffs' counsel (Dkt. 101).

I further certify that on June 10, 2020, the Court conducted a telephonic status conference. I further certify that on June 12, 2020, Magistrate Moses issued an Order rescheduling the conference to June 24, 2020, sanctioning Defendants Miah and Islam each in the amount of \$100 for their failure to appear at the June 10, 2020 telephonic status conference and requiring the sanctions to be made payable to Plaintiffs' counsel no later than June 23, 2020 (Dkt. 104). I further certify that on June 24, 2020, the Court conducted another telephonic status conference. I further certify that on June 26, 2020, the Court issued an Order determining that Defendants had failed to pay the \$100 sanction assessed against each of them for failure to appear at the June 10 conference; Defendant Islam still

failed to provide Plaintiffs' counsel with a completed IRS Form 4506-T.; Defendant Miah failed again to produce the notebooks that contained the names of all of Red Chili's employees, their salary and schedules (Dkt. 106). I further certify that on June 26, 2020, the Court also ordered the Plaintiffs to advise the Court, no later than July 1, 2020, whether they wish to seek terminating sanctions (Dkt. 106), and that on June 30, 2020, Plaintiffs advised the Court of their intent to seek terminating sanctions against the individual Defendants (Dkt. 107). I further certify that on July 1, 2020, the Court granted Plaintiffs leave to file a motion to strike the individual Defendants' answer and affirmative defenses and enter a default judgment against them (Dkt. 108).

I further certify that on July 31, 2020, Plaintiffs filed their motion to strike Defendants' Joint Answer and Affirmative Defenses (Dkt. 109). I further certify that on August 27, 2020, Magistrate Moses issued an Order stating that Defendants were to file any response by September 17, 2020 (Dkt. 114). I further certify that on November 24, 2020, Magistrate Moses issued a Report and Recommendation that Plaintiff's motion to strike be granted, that the Defendants' Answer be stricken, and that Plaintiffs be instructed to seek a default judgment against the individual Defendants (Dkt. 116). I further certify that on January 6, 2021, District Judge Abrams issued an Order stating that Defendants shall have until no later than January 27, 2021 to file any written objections (Dkt. 119). I further certify that on February 8, 2021, District Judge Abrams adopted the November 24, 2020 Report and Recommendation issued by Magistrate Moses, and therefore, granted Plaintiffs' motion to strike, struck Defendants' Joint Answer and Affirmative Defenses, and instructed Plaintiffs to make any motion for default judgment no later than March 10, 2021 (Dkt. 124).

The defaults of the Defendants are hereby noted.

Dated: New York, New York
March 1 , 2021

RUBY J. KRAJNICK
Clerk of Court

K. Mango
By: _____
Deputy Clerk